

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ROGER ROSS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 270,258
<b>MORROW FOUNDRY, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>TRAVELERS INSURANCE COMPANY,</b>	)	
<b>INTERSTATE SERVICES AND</b>	)	
<b>RSKCo</b>	)	
Insurance Carriers	)	

**ORDER**

The respondent and its insurance carrier RSKCo appeal Administrative Law Judge Jon L. Frobish's November 6, 2002, preliminary hearing Order.

**ISSUES**

The Administrative Law Judge (ALJ) granted claimant's request for medical treatment and appointed orthopedic surgeon Jay L. Bryngelson, M.D., as claimant's authorized treating physician. The ALJ found claimant had suffered a back injury on September 4, 2001, and bilateral upper extremity injuries after July 25, 2002, while employed by respondent.

The respondent and its insurance carrier RSKCo appeal and in their application for review listed the issue as follows:

"1. Whether claimant met by personal injury on the date of injury determined by the court."

None of the parties filed briefs with the Board. Thus, the Board does not have the benefit of the parties' arguments or contentions.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record, the Board makes the following findings and conclusions:

The Board finds claimant's testimony and the medical records admitted at the preliminary hearing satisfies claimant's burden of proof that he sustained both back and bilateral upper extremity injuries while performing repetitive heavy work activities for respondent. In fact, the preliminary hearing record proves respondent and its insurance carrier Travelers provided medical treatment for claimant's back and upper extremity injuries until Dr. Bryngelson diagnosed claimant with bilateral carpal tunnel syndrome and recommended surgery. That occurred in May 2002. At the November 6, 2002, preliminary hearing, claimant testified, because medical treatment was denied, his hand symptoms worsened as he had to continue to perform his regular job of heavy physical work activities.

The Board finds the issue raised by the respondent and its insurance carrier RSKCo relates only to the accident date the ALJ found for claimant's bilateral upper extremity injuries. At the preliminary hearing, the attorney representing Travelers announced that Travelers admitted it was liable for claimant's work-related back injury.

The Board concludes it does not have jurisdiction to review a preliminary hearing finding in regard to claimant's accident date. Here, the compensability of claimant's back and upper extremity injuries while employed by the respondent was not at issue. The only issue is the date the accident occurred which caused claimant's upper extremity injuries. The Board finds, in determining the accident date, the ALJ did not exceed his authority.<sup>1</sup>

The Board also finds the ALJ's preliminary hearing finding of claimant's accident date is not a jurisdictional issue that grants the Board authority to review.<sup>2</sup>

**WHEREFORE**, it is the finding, decision, and order of the Board that it does not have jurisdiction to review, at this juncture of the proceeding, ALJ Jon L. Frobish's November 6, 2002, preliminary hearing Order and the appeal of the respondent and its insurance carrier RSKCo is dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2003.

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<sup>1</sup> K.S.A. 44-551(b)(2)(A).

<sup>2</sup> K.S.A. 44-534a(a)(2).

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BOARD MEMBER

- c: Patrick C. Smith, Attorney for Claimant  
John R. Emerson, Attorney for Respondent and RSKCo  
Leigh C. Hudson, Attorney for Respondent and Travelers Insurance Company  
M. Doug Bell, Attorney for Respondent and Interstate Services  
Jon L. Frobish, Administrative Law Judge  
Director, Division of Workers Compensation